

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA

v.

ENRIQUE "HENRY" P. FIALLO,

Defendant.

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: Criminal No.:  
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CRIMINAL INFORMATION

The United States Attorney charges:

**BACKGROUND**

At all times relevant to this Criminal Information:

**The Company**

1. Enterasys Network Systems, Inc., ("Enterasys") was a Delaware corporation headquartered in Rochester, New Hampshire. The primary business of Enterasys and its affiliated companies was designing and selling hardware and software systems for computer networks and providing related support services.

2. Enterasys was a publicly traded company and its stock was traded under the symbol "ETS" on the New York Stock Exchange, a national securities exchange. Enterasys succeeded its former parent company Cabletron Systems, Inc. ("Cabletron") when the two companies merged on August 6, 2001.

**The Defendant**

3. Defendant FIALLO was the Chairman, President and Chief Executive Officer of Enterasys from August 6, 2001, to in or about April 2002. From in or about November

1998, defendant FIALLO served in other senior corporate capacities at Enterasys and at Cabletron.

**COUNT ONE**  
**Conspiracy**  
**18 U.S.C. § 371**

4. The allegations contained in paragraphs 1 through 3 of this Information are realleged and incorporated as if set forth in full herein.

**The Conspiracy and Its Objects**

5. From in or about August 2001, to on or about October 16, 2001, in the District of New Hampshire and elsewhere, the defendant,

**ENRIQUE “HENRY” P. FIALLO**

did unlawfully, willfully, and knowingly combine, conspire, confederate, and agree with others, both known and unknown, to commit certain offenses against the United States, namely (a) employing a device, scheme and artifice to defraud in connection with the offer and sale, and the purchase and sale, of Enterasys securities using the means and instrumentalities of interstate commerce, in violation of Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of Federal Regulations, Section 240.10b-5; (b) making untrue, false and misleading statements of material fact in reports and documents required to be filed under the Securities Exchange Act of 1934 and the rules and regulations thereunder, in violation of Title 15, United States Code, Sections 78j(b) and 78ff; (c) falsifying books, records and accounts of Enterasys, in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and 78ff, and Title 17, Code of Federal Regulations,

Section 240.13b2-1; (d) making and causing to be made materially false and misleading statements and omitting to state and causing others to omit to state material facts to Enterasys' outside auditors in connection with the preparation and filing of a document and report required to be filed with the SEC, in violation of Title 15, United States Code, Section 78ff and Title 17, Code of Federal Regulations, Section 240.13b2-2; and (e) mail and wire fraud in violation of Title 18, United States Code, Sections 1341, 1343 and 1346.

6. The objects of the conspiracy were, among other things: (a) to ensure that Enterasys would report that it had met or exceeded company revenue projections and the published expectations of Wall Street analysts, regardless of the company's actual financial results; (b) to artificially maintain and increase the market price of Enterasys stock; and (c) to maintain the conspirators' status and positions within the company.

#### Manner and Means of the Conspiracy

7. It was part of the conspiracy that defendant FIALLO and others would cause Enterasys to fraudulently and improperly recognize revenue on its books and records so that Enterasys could claim that it had met or exceeded previously announced revenue targets and published Wall Street expectations, regardless of the company's actual financial results.

8. It was further part of the conspiracy that defendant FIALLO and others caused Enterasys to secretly purchase its own revenue by "investing" funds in "investee" companies in return for an equity or debt interest in those companies and the companies' agreements to use the funds to immediately purchase Enterasys products.

9. It was further part of the conspiracy that, in certain instances where the “investee” company did not have the financial ability to pay for the product independent from the funds supplied by Enterasys which, under relevant accounting rules, would preclude Enterasys from fully recognizing revenue from the transactions, defendant FIALLO and others directed the “investees” to use the Enterasys-supplied funds to purchase Enterasys products from Enterasys’ distributors and third party resellers and to pay the distributors and third party resellers for the products as soon as the “investees” received the funds from Enterasys.

10. It was further part of the conspiracy that, defendant FIALLO and others instructed the distributors and third party resellers to submit purchase orders to Enterasys so that Enterasys’ books and records would reveal no connection between Enterasys’ investments in the “investees” and the “investees” purchases of Enterasys products.

11. It was further part of the conspiracy that defendant FIALLO and others endeavored to conceal from the company’s outside financial auditors the link between Enterasys’ investments in the “investees” and the “investees” purchases of Enterasys products for the purpose of allowing Enterasys: (a) to circumvent the accounting rules; and (b) to improperly recognize revenue from the transactions.

#### Overt Act

12. On or about September 26, 2001, defendant FIALLO transmitted by wire from Rochester, New Hampshire, in a telephone conference call with securities analysts: (a) statements falsifying and improperly inflating Enterasys’ revenue; and (b) false

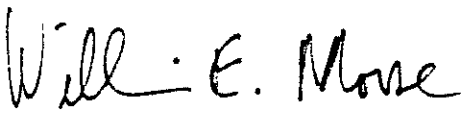
representations that Enterasys had exceeded its previously announced revenue target and Wall Street expectations for the quarter ended September 1, 2001.

All in violation of Title 18, United States Code, Section 371.

Dated: September 14, 2004

PETER E. PAPPS  
Acting United States Attorney

By:

  
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William E. Morse  
Assistant United States Attorney